IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2095 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

HUSSAINBHAI B.PATHAN - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR BHARAT JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner State Road Transport Corporation has challenged the legality of an Order dated 31.07.2003 passed by the Controlling Authority under the Payment of Gratuity Act(hereinafter

referred to as the Act) as also the legality of an Order dated 16.06.2004 passed by the appellate authority in rejecting the appeal filed by the State Transport Corporation. Review application filed by the petitioner before the appellate authority also came to be rejected by an Order dated 09.08.2004, which is also impugned in the present petition.

2. The respondent workman having superannuated had claimed his gratuity payable by the petitioner. Since the amount of gratuity released by the petitioner did not satisfy the respondent, he approached the controlling authority under the said Act. The controlling authority allowed the application filed by the workman and directed the State Transport Corporation to release an additional gratuity of an amount of Rs. 61,009/- with 12% interest from 30th April 2001 till its payment. Appeal filed by the petitioner was rejected substantially. Only the interest portion was reduced from 12% to 10% by the appellate authority.

3. Since there is no dispute about the factual aspect of the matter, it is not necessary to record at length the observations made by the authorities while passing the

impugned orders. Suffice it to note few events leading to the present petition.

3.1Respondent workman was dismissed from service for certain misconducts alleged to have been committed by him. Order of dismissal was passed on 19th December 1989. Respondent challenged his dismissal by raising an industrial dispute, which was referred for its adjudication to the Labour Court-Bharuch as Ref. (LCB) No. 167/94. Reference came to be allowed in part by an Award dated 19.12.2000. The operative portion of the Award when translated, reads as under :

> "Reference of the second party Shri Hasanbhai B. Pathan against the first party, Regional Director, S.T. Bholav-Bharuch is partially allowed. Second party is directed to be reinstated in service on the original post without wages for the intervening period. After reinstating the second party, it is directed that 3 increments with permanent effect will be withheld. This Award will be implemented within a period of 30 days of its publication. Considering the facts arising in the reference, first party shall pay a cost of Rs. 500/- to the second party, which is also provided".

3.2It is not in dispute that on the basis of the direction contained in the said Award, the respondent came to be reinstated in service and on the basis of his total length of service; also considering his

deemed service for the intervening period, he was also paid gratuity by the employer upon his superannuation.

3.3The contention of the workman however is that the gratuity paid by the employer was not adequate and the calculation for the purpose of payment of gratuity ought to have been made on the basis of notional pay that the workman would have received by releasing his increments for the entire intervening period from the date of his dismissal till his reinstatement.

3.4It is this central issue, which has given rise to the controversy involved in the present petition. Both sides agreed that the orders passed by the Controlling Authority and the appellate authority, which are challenged in the present petition are on the basis of the notional increments calculated in favour of the workman for the period during which, he was not in active service.

4.The main question that calls for consideration is whether in facts of the present case, the authorities below were justified in giving benefit of increments to the workman for the intervening period. Appearing for

the State Transport Corporation, learned Advocate Shri Rawal urged that the authorities committed grave error in directing payment of additional gratuity when the S.T. Corporation had already made full payment as per the rules. He submitted that the Labour Court in its Award dated 19th September 2000 made no provisions of continuity of service or for grant of notional increments. In that view of the matter, it was not open for the authorities to calculate the gratuity of the workman on the basis of such notional increments. He also pointed out that the Labour Court observed that the dismissal order which was passed by in the year 1989 was challenged by the workman in the year 1994. This was one of the reasons why the Labour Court provided neither for backwages nor for continuity in service. He also submitted that the Labour Court provided for withholding of 3 increments with permanent effect after reinstatement of the workman.

4.1 Reliance was placed on the decision of the Hon'ble Supreme Court of India in the case of **A.P.S.R.T.C. and Anr. Vs. S Narsagoud reported in 2003 SCC(L & S) 161**. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **A.P.S.R.T.C. Vs. Abdul**

Kareem reported in 2005 AIR SCW 3809.

5.On the other hand, learned Advocate Shri Utkarsh Jani, appearing for the respondent workman sought to support the orders under challenge. His contention was that the Labour Court provided for a particular punishment to be imposed on the workman, no further punishment can indirectly be imposed by withholding increments for the entire period, which was not the intention of the Labour Court. It was further contended that the Labour Court provided for reinstatement of the workman while providing for substitution of the penalty. This penalty having been implemented by the employer, no further increments can be withheld.

5.1Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **Gurpreet Singh Vs. State of Punjab & Ors. Reported in 2002(92) FLR 838** in which the Hon'ble Court observed that when the plaintiff is directed to be reinstated in service, setting aside the order of termination, continuity of service cannot be denied.

5.2It was further urged that on the basis of the above

mentioned decision of the Hon'ble Supreme Court in the case of Gurpreet Singh (Supra), learned Single Judge of this Court in a Judgement dated 07.03.2002, passed in Special Civil Application No. 13758 of 1993 also has taken a similar view.

5.3With respect to the decisions of the Hon'ble Supreme Court in the case of A.P.S.R.T.C. and Anr. Vs. S Narsagoud(Supra) and in the case of A.P.S.R.T.C. Vs. Abdul Kareem(Supra), learned Advocate submitted that both these judgements are rendered in different factual background and the ratio laid down therein would not apply to the present case. In any case, it was his contention that the decision of the Hon'ble Supreme Court in the case of Gurpreet Singh (Supra) was rendered by a bench comprising of three learned Judges, whereas, the subsequent decisions noted hereinabove had been rendered by benches comprising of two learned Judges and in neither of these Judgements, the decision of the Hon'ble Supreme Court in the case of Gurpreet Singh (Supra) has been noticed. He therefore contended that the decision of the Hon'ble Supreme Court in the case of Gurpreet Singh (Supra) should be followed.

6.Having heard the learned Advocates appearing for the parties, it can be seen that while allowing the reference of the respondent workman in part, the Labour Court in its Award dated 19.12.2000 was pleased to direct his reinstatement without backwages. It was also provided that a penalty of withholding of 3 increments permanently will be imposed on the workman on his reinstatement. From the reproduction of the operative portion of the Award, it is apparent that the Labour Court neither specifically provided for continuity, nor directed releasing of increments for the intervening period. For the entire period, the Labour Court also provided that the workman will not be entitled to backwages. The short question is, under these circumstances, is he entitled to receive notional increments for the said period?

6.1In the decision of the Hon'ble Supreme Court in the case of A.P.S.R.T.C. and Anr. Vs. S Narsagoud(Supra), the Hon'ble Supreme Court considered a situation where the Labour Court in its Award had provided `for reinstatement with continuity of service without backwages. In this background, the Hon'ble Supreme Court observed that there is a difference between an

Order of reinstatement accompanied by a simple direction of continuity of service and a direction where, reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits. Para 9 of the said decision reads as follows :

> "9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

6.2In the said decision, in para 10, the Hon'ble Supreme Court further observed that the period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of overstayal. Ordinarily, the increments are earned on

account of the period actually spent on duty or during the period spent on leave, the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling the respondent to earn increments during the period on unauthorised absence from duty though held liable to be punished in a departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee.

6.3This view was reiterated and elaborated in the later decision in the case of A.P.S.R.T.C. Vs. Abdul Kareem(Supra), wherein the Hon'ble Supreme Court negatived the contention of the counsel for the workman that once a dismissal has been set aside, denial of consequential relief is an exception, unless such denial was being specifically spelt-out, otherwise, the natural and consequential relief must follow. The Hon'ble Supreme Court observed that the arguments advanced by the counsel is not tenable in law in view of the decision in the case of A.P.S.R.T.C. and Anr. Vs. S Narsagoud(Supra). Observing that the principle of law on the point is no longer *res integra,* the Hon'ble Supreme Court reiterated the observations made in the

earlier decision in paragraph 9. In paragraph 11, the Hon'ble Supreme Court made following observations:

> "11. Reverting to the facts of the case at hand, as already noticed,the Labour Court specifically directed that the reinstatement would be without backwages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without backwages, he could not claim a benefit of increments notionally earned during the period when he was out of service. It would be incongruous to suggest that an employee, having held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence."

7. From the above factual background and the judicial pronouncement, it can be seen that the claim of the workman for receiving gratuity by calculating his pay after releasing notional increments is not tenable. As noted earlier, the Labour Court had provided for reinstatement. However, neither backwages nor continuity was granted specifically; not to mention about releasing of increments for the intervening period. In fact, what was provided for was to withhold 3 increments with future effect after reinstatement. Combined effect of these directions of the Labour Court appreciated in the background of the above mentioned

judicial pronouncement leave no manner of doubt that the respondent was not entitled to receive notional increments since neither continuity nor increments were provided for by the Labour Court. Reliance placed by the respondent on the decision of the Hon'ble Supreme Court in the case of Gurpreet Singh (Supra) as well on the decision of this Court in a Judgment dated 7th March 2002 in Special Civil Application No. 13758 of 1993 is misplaced.

7.1In the case of Gurpreet Singh (Supra), the Hon'ble Supreme Court observed that it is not possible to understand how the continuity of service can be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. In the present case, the workman has not been denied continuity in service. On being denied continuity, his gratuity entitlement would have suffered by treating the entire period of his absence from the date of dismissal to his reinstatement as a break in service. On the contrary, employer has paid the gratuity by treating the entire period as continuous for the purpose of receiving post retiral benefits. Continuity *per se* would not include grant of notional increments

is clearly laid down by the Hon'ble Supreme Court in the case of A.P.S.R.T.C. and Anr. Vs. S Narsagoud(Supra). Therefore, though the workman was entitled to receive gratuity on the basis of his continuous service for the entire period, his insistence on being paid gratuity by releasing notional increments cannot be accepted and I see no application of the ratio of the decision of the Hon'ble Supreme Court in the case of Gurpreet Singh (Supra) in facts of the present case.

8. For the similar reasons, I also find that the decision of the learned Single Judge of this Court in its Judgment dated 7th March 2002 in Special Civil Application No. 13758 of 1993 was not deciding the issues arising in the present petition. In the said decision also, learned Judge was considering the question of continuity in service once when the termination order is set aside and the workman is directed to be reinstated in service. As noted earlier, the Hon'ble Supreme Court has held that even when the Labour Court grants continuity of service, *ipso facto* the workman is not entitled to receive notional increment until so provided for in the Award

itself. In view of this conclusion, I do not see any reason to resolve on question of binding precedents as suggested by the learned Advocate for the respondent.

9. In view of the above conclusions, I find that the authorities under the Payment of Gratuity Act, committed error in passing the impugned Orders, directing releasing of a sum of Rs. 61,009/- in favour of the respondent. Impugned orders are therefore quashed and set aside.

10. Rule made absolute to the above extent. No orders as to costs.

(Akil Kureshi, J.)

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